



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Allen Organ Company

File: B-231473

Date: June 9, 1988

---

### DIGEST

Protest alleging solicitation deficiency that is apparent prior to the closing date for the receipt of initial proposals is untimely when included in the protester's initial proposal since the contracting agency is under no obligation to open or evaluate proposals until after the closing date, the time by which protests of this type must be filed.

---

### DECISION

Allen Organ Company (Allen) protests request for proposals (RFP) No. 502-37-88 for a pipe organ, issued by the Veterans Administration (VA). Allen argues that the RFP's specification of a design requirement, which excludes organs that produce sound electronically, rather than a performance requirement, is inappropriate and unduly restrictive of competition.

We dismiss the protest as untimely.

Allen enclosed with its initial proposal to the VA, due April 28, 1988, a cover letter dated April 25, 1988, in which it declared its intent to protest in the event its proposal was rejected. Allen received notification of the VA's denial of its protest on May 11, 1988. Its subsequent protest to our Office was filed on May 18, 1988.

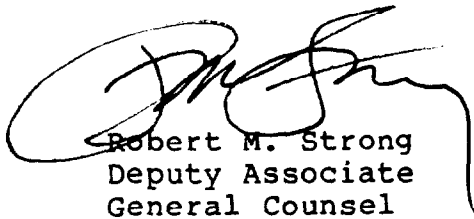
Our Bid Protest Regulations provide that a protest based upon alleged improprieties in a solicitation which are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date. 4 C.F.R. § 21.2(a)(1) (1988).

Because Allen's April 25 protest letter to the VA accompanied its initial proposal, it was untimely filed. See, e.g., Paramount Systems Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646. Our Office does not consider a

042421/136059

protest included in a proposal as timely because the contracting agency is under no obligation to open, read or evaluate proposals until after the closing date and, therefore, has no prior notice of a deficiency alleged in such a protest. Id.

Where a protest is filed initially with the contracting agency, the General Accounting Office will consider a subsequent protest only if the initial protest was timely filed, and the subsequent protest is filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Since the protest to the agency was not timely filed, we will not consider the protest to our Office.



Robert M. Strong  
Deputy Associate  
General Counsel